IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

ITA.No. 18 of 2007

(ITA.445/COCH//2005 of I.T.A.TRIBUNAL,COCHIN BENCH)

APPELLANT/APPELLANT IN ITA

SHRI P.R.NARAHARI RAO, GEETHA LODGE,
M.G.ROAD, ERNAKULAM.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENT/ RESPONDENT IN ITA

COMMISSIONER OF INCOME TAX, COCHIN.

BY SHRI GEORGE K. GEORGE, SC, INCOMETAX.

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 18/07/2007, ALONG WITH ITA NOS. 25 AND 26 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

.....

I.T.A. Nos. 18, 25 AND 26 OF 2007

.....

Dated this the 18th July, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Since the issues involved in all these appeals are common, by consent of the counsel for the parties to the lis, the matter is taken up for final hearing, though they are posted for admission before this court today.

2. Aggrieved by the orders of re-assessment for the assessment years 1993-94, 1994-95 and 1996-97, passed by the assessing authority in exercise of his powers under section 147 of the Income Tax Act, the assessee had carried the matter by way of first appeal before the Commissioner of Incometax (Appeals-III). Along with those appeals, the assessee had also filed appeals against the orders of re-assessment for the assessment years 1991-92, 1992-93 and 1995-96.

3. Before the first appellate authority, the assessee's learned representative, in fact, had not objected to the orders passed by the assessing authority, in the sense, that, he was really not questioning the correctness or otherwise of the orders of re-assessment passed by the assessing authority for the assessment years 1993-94, 1994-95 and 1996-97. The first appellate authority has noticed the submissions made by the learned representative of the assessee and therefore, has not adverted to the contentions canvassed by the representative of the assessee for those assessment years. In the orders passed by the first appellate authority, there is a statement by the first appellate authority that the assessee's representative has not agitated the dis-allowance of interest made by the assessing authority for the aforesaid

assessment years . In the words of the first appellate authority:

> *"At the time of hearing the authorised representative has not agitated the disallowance of interest made by the A.O. at Rs.48,480/- in the assessment years 1993-94,1994-95 and 1996-97. It has been prayed that for assessment years 1991-92, 1992-93 and 1995-96, A.O. should have restricted the disallowance of interest for Rs. 48,480/- instead of making the disallowance by the heavier amounts in these years."*

After making the said statement, the first appellate authority had disposed of the appeal in the following manner:

> *"In the result, the appeal for the assessment years 1991-92, 1992-93 and 1995-96 are partly allowed and for assessment years 1993-94, 1994-95 and 1996-97 are treated as dismissed."*

5. Having not objected to the orders passed by the assessing authority in respect of the assessment years 1993-94, 1994-95 and 1996-97 and having allowed the first appellate authority to pass an order in a particular manner, the assessee cannot be an aggrieved person and therefore, could not have filed any appeals before the Tribunal, though technically an appeal might lie, such an appeal would be clearly unarguable.

6. The Tribunal, after considering the case of the assessee had disposed of the appeals, by its order dated 9th October, 2006. Aggrieved by the aforesaid order, the assessee is before us in these appeals filed under section 260A of the Income Tax Act.

7. The assessee has raised the following substantial questions of law for our consideration and decision:

> *"i) Whether on the facts and in the circumstances of the case, was the Income Tax Appellate Tribunal justified in confirming the disallowance of deduction on interest?*
>
> *ii) In the facts and circumstances of the case ought not the Tribunal have held that the re-opening under Section 147 is bad in law more so in view of the judgment of the Supreme Court?"*

8. Shri Anil D. Nair, learned counsel for the assessee would submit on the merits of the appeal. Percontra, Shri George K. George, learned standing counsel for the Revenue would submit that the first and foremost, having conceded before the first appellate authority that he is not agitating the appeals for the assessment years 1993-94, 1994-95 and 1996-97, the assessee could not have filed any appeals before the Income Tax Appellate Tribunal. In our opinion, Shri George K. George, learned standing counsel for the Revenue is justified in saying so, the reason being that the assessee, having not objected to the orders passed by the assessing authority on a particular point before the first appellate authority and having allowed the first appellate authority to pass an order, could not have filed further appeals before the Income Tax Appellate Tribunal. The Tribunal on that sole ground itself, could have rejected the appeals.

9. In that view of the matter, we decline to answer the questions of law raised for our consideration and decision. Therefore, the appeals require to be rejected and they are rejected.

10. I.A.No. 1114 of 2007 in I.T.A.No. 25 of 2007 and I.A.No. 1747 of 2007 in I.T.A.No. 26 of 2007 are also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/dk